

November 24, 2004

HYDROTRICITY – JOHN BERTL
Request for Advisory Ruling
On the Interpretation of Chapter 313

ADVISORY RULING

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

In this Advisory Ruling, we interpret our net energy billing rule (Chapter 313) as not requiring a utility to net bill against an account that is over seven miles from the applicable hydroelectric facility and is not adjacent to or nearby the stream or pond behind the dam. Under the facts presented to us in this request, we conclude that the generation facility is not in the “vicinity” of the location of the account as required by Chapter 313.

II. BACKGROUND

On August 30, 2004, John Bertl filed a letter requesting that the Commission direct Central Maine Power Company (CMP) to add the electrical load from property located in Kingfield, Maine to his net energy billing arrangement associated with a hydroelectric facility on Gilman Stream in North New Portland. Mr. Bertl indicated that CMP had refused his request in this regard. On September 13, 2004, the Commission issued a Notice of Proceeding, stating that Mr. Bertl’s letter would be treated as a request for an advisory ruling. The Notice also allowed CMP to file a response to Mr. Bertl’s request and Mr. Bertl and other interested persons to file replies to CMP’s response.

In his August 30, 2004 letter, Mr. Bertl explained that he and his wife were renting the Kingfield property as their residence and place of business, and that business would be the only source of income for performing maintenance and improvements on the Gilman Stream facility. Mr. Bertl stated that the Kingfield property meets the requirements of Chapter 313 because: (1) he will own or lease the property; (2) the property is in the area of the dam upstream; and (3) the property is necessary for the operation of the facility.

CMP responded that it has allowed a very broad reading of the eligibility requirements of Chapter 313 by netting five of Mr. Bertl’s accounts against the generation of the Gilman Stream facility. However, according to CMP, Mr. Bertl’s latest request is far outside any reasonable interpretation of the “vicinity” requirement of Chapter 313. CMP stated that Mr. Bertl’s new residence is over seven miles from the Gilman Stream facility and is not adjacent to or nearby the stream or pond behind the

dam; rather, the new residence is located adjacent to a completely different body of water (the Carrabasset River). CMP argued that no reasonable person could view the new residence as being in the “vicinity” of the facility.

Furthermore, CMP stated that use of income from a business conducted from the Kingfield property for maintenance or improvements on the dam does not create a sufficient nexus. According to CMP, the new account is not related to the existence of the dam solely because income may be used to perform maintenance or improvements on the dam. CMP indicated that such a rationale would allow the net billing of the usage of any corporation in Maine if a customer owned stock and used associated dividends to fund improvements or maintenance on an eligible generation facility.

Mr. Bertl replied that his last residence was the refurbished office of the old saw mill at the dam, but that the building is no longer habitable. The new residence in Kingfield has become the office for the Gilmore Stream facility and contains all its related files and paperwork. In addition, Mr. Bertl states that two existing accounts are almost three miles north of the facility and another is almost two miles to the south. Mr. Bertl indicates that three of the five accounts will be removed from his net billing agreement, so that he is not adding another account, but downsizing and transferring to another location. Finally, Mr. Bertl argued that the new residence is still in the area of the dam.

The Public Advocate filed comments in support of Mr. Bertl’s position. The Public Advocate states that the old residence is no more or less associated or connected with the dam than the new residence and that a distance of one mile or seven miles should not make much difference in this case. In the Public Advocate’s view, Kingfield and North New Portland are in the same area and should not be considered different portions of the State.

III. DECISION

For the reasons discussed below, we conclude that Mr. Bertl’s new residence in Kingfield is not within the “vicinity” of the generation facility as the term is used in Chapter 313. Accordingly, CMP is under no obligation to net bill the load of the new residence.

Among its provisions, Chapter 313 requires that:

the renewable facility must be located on or in the vicinity of the customer’s premises and used primarily to offset part or all of the customer’s own electricity requirement.

Chapter 313, § 3(C). The issue before us is whether the Kingfield residence is in the “vicinity” of the hydroelectric facility for purpose of Chapter 313.

We have previously addressed the vicinity requirement in the context of Mr. Bertl's accounts that were located approximately one mile from the generation facility, *Hydrotricity, Request for Waiver Under Section 4 of Chapter 313*, Docket No. 2001-27 (April 3, 2001) (*Hydrotricity*). In allowing Mr. Bertl's accounts to be net billed in that proceeding, we stated:

We agree that flexibility with respect to hydropower is consistent with the spirit and purposes of Chapter 313 and conclude that the "vicinity" requirement should be construed to allow Mr. Bertl to net bill against all his accounts located adjacent to or nearby the stream or pond behind the dam. By construing the "vicinity" requirement in this manner, we restrict net billing to facilities that can be considered as associated or connected with the existence of the dam (a Bertl account located in some other portion of the State would not qualify). Consistent with the rule's intent, this approach represents a fair balance between facilitating small-scale renewable power and limiting the cost to utilities.

Hydrotricity at 5. In the *Hydrotricity* ruling, the determining factor was not the distance of the account from the generation facility. Rather, it was whether the accounts were located "adjacent to or nearby the stream or pond behind the dam" so that they can be considered as "associated or connected with the existence of the dam." The account at issue in this proceeding is not adjacent to or nearby the stream or pond behind the dam, and thus the facts of this case do not fall within our previous ruling.

We are not inclined to further expand the vicinity requirement to allow net billing in this case. To do so would strain the normal meaning of the term "vicinity" as used in the rule. Moreover, as we previously stated, "the net billing rule was carefully crafted to balance the benefits of facilitating small-scale renewable facilities with the costs of doing so." *Hydrotricity* at 4. We explained that the net billing rule encourages small-scale renewable facilities by relieving their owners of some of the costs of transmission and distribution. As noted, these costs do not vanish, but are shifted to the utility or its ratepayers. *Id.* Accordingly, we have expressed the view that all efforts should be made to enable small generating facilities to sell excess electricity directly into the electricity market before consideration is given to expanding net billing beyond its historical limits. *Id.*¹

The Commission, at the direction of the Legislature, has recently adopted a rule (Chapter 315) that allows all small generators (5 MW or less) to sell excess generation into the wholesale market for hourly market clearing prices (minus administrative costs). This new rule will allow Mr. Bertl, and similarly situated small generation owners, to

¹ We expressed similar views in the Commission's report to the Legislature on the promotion of renewable resources. *Report and Recommendations on the Promotion of Renewable Resources* at 73-74 (Dec. 31, 2003).

obtain market value for their excess generation without the subsidy inherent in net billing. For this reason, use of the new small generator rule is preferable to the expansion of net billing.

IV. CONCLUSION

CMP is under no obligation to net bill Mr. Bertl's Kingfield account against the output of the Gilman Stream hydroelectricity facility.

Dated at Augusta, Maine, this 24th day of November, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.